

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING ZONING CODE AMENDMENTS RELATING TO DENSITY,
LOT SIZE, SETBACKS, AND PUBLIC WATER & SEWER AND
REASONABLE MEASURES FOR THE BIRCH BAY UGA**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations; and

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The subject proposal includes the following amendments to the Official Whatcom County Zoning Ordinance (Title 20):
 - a. Deleting a statement defining “minimum density” and making other amendments to the Urban Residential District (WCC 20.20);
 - b. Amending the density, minimum lot size, and other provisions in the Urban Residential – Medium Density District (WCC 20.22);
 - c. Deleting a statement defining “minimum density” and making other amendments to the Urban Residential Mixed District (WCC 20.24);
 - d. Amending the density, public water and sewer, and other provisions in the General Commercial District (WCC 20.62);
 - e. Amending the density, minimum lot size, public water and sewer, and other provisions in the Resort Commercial District (WCC 20.64);
 - f. Amending the setback requirements for the Resort Commercial District in the Supplementary Requirements (WCC 20.80); and
 - g. Adding a definition of “Minimum net density” (WCC 20.97).

2. A Determination of Non-Significance was issued by the SEPA Responsible Official on April 11, 2023 (File # SEPA2023-00027).
3. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on April 28, 2023.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on April 26, 2023.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on April 28, 2023.
6. The Planning Commission held a public hearing on the subject amendments on May 11, 2023.
7. In order to approve an amendment to the development regulations, the County must find that the amendment is consistent with the comprehensive plan (WCC 22.10.060(2)).
8. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
9. The State Department of Commerce *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identifies "Reasonable Measures as Tools for Increasing Housing Availability and Affordability" including:
 - Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types (p. 116).

- 10. Whatcom County Comprehensive Plan Goal 2P states:
 - . . . The County should approve new residential developments at overall average net densities as shown below, while respecting unique characteristics of each community:
 - Birch Bay – five to ten units per net acre . . .
- 11. The Birch Bay Urban Growth Area (UGA) includes land zoned Urban Residential Medium Density (URM). The URM-6 zone does not require a minimum net density for residential development. Therefore, development can occur below the Comprehensive Plan goal of 5 to 10 units/acre. For example, between 2016 and 2021, the achieved net density for the URM-6 zone in the Birch Bay UGA was 3.3 units/acre for single family development (*Buildable Lands Report 2022 Whatcom County Review and Evaluation Program*, Revised February 27, 2023, p. 49). Requiring residential units to be developed at a minimum densities in the URM-6 zone is consistent with and will implement *Whatcom County Comprehensive Plan Goal 2P*.
- 12. The Birch Bay UGA includes land zoned General Commercial (GC). The GC zone does not require a minimum net density for residential development. Therefore, development can occur below the Comprehensive Plan goal of 5 to 10 units/acre. Requiring residential units to be developed at a minimum densities in the GC zone is consistent with and will implement *Whatcom County Comprehensive Plan Goal 2P*.
- 13. The Birch Bay UGA includes land zoned Resort Commercial (RC). The RC zone does not require a minimum net density for residential development. Therefore, development can occur below the Comprehensive Plan goal of 5 to 10 units/acre. Requiring residential units to be developed at a minimum densities in the RC zone is consistent with and will implement *Whatcom County Comprehensive Plan Goal 2P*.
- 14. A definition of “Minimum net density” will be inserted in WCC 20.97. That definition will calculate minimum number of dwelling units per net acre after deducting areas within the 100-year floodplain, areas restricted from development by critical area buffers or shoreline setbacks, and areas used for common facilities such as road rights of way or easements, utility easements, stormwater facilities, parks, and common open space and land devoted to commercial uses in a mixed use development.
- 15. The “Setback Table” in the Zoning Code requires a 5’ side and rear yard setback in the Resort Commercial District (WCC 20.80.210(5)(b)). However, there are special provisions in the Zoning Code that modify these setbacks under certain circumstances, including WCC 20.80.253(4)(b) that requires “Side and rear yard setbacks for multifamily housing, recreational vehicle parks, and mobile home parks shall be 20 feet.”

16. There are a variety of uses in the Resort Commercial District that are not subject to the 20' side yard setback including but not limited to: Retail and office uses, restaurants, hotels, motels, single family homes, fire stations, community centers, schools, and retirement homes. It's unclear why multifamily housing, RV parks, and mobile home parks were singled out for a larger setback under WCC 20.80.253(b). Given that other uses that could have greater height are not included and that uses with lesser height (RV and mobile home parks) are included, it does not appear that this provision was intended to address view protection.
17. The subject amendments delete WCC 20.80.253(b) that require "Side and rear yard setbacks for multifamily housing, recreational vehicle parks, and mobile home parks shall be 20 feet." WCC 20.80.950 (Mobile home park standards) and WCC 20.80.955 (RV Park Standards) also require a 20' setback for these uses. Therefore, the effect of would be to eliminate the 20' setback for multifamily housing.
18. The subject amendments apply to the Birch Bay UGA and other areas of the County. These amendments further the *Whatcom County Comprehensive Plan* goals and policies by concentrating urban levels of growth in UGAs, allowing increased density, and allowing smaller lots in UGAs.
19. Whatcom County and the cities revised the *Buildable Lands Report 2022 – Whatcom County Review and Evaluation Program* on February 27, 2023. This Report was issued pursuant to RCW 36.70A.215, the "Review and Evaluation Program" requirements of the Growth Management Act (GMA).
20. The *Buildable Lands Report 2022 – Whatcom County Review and Evaluation Program* shows that reasonable measures are needed for the Birch Bay UGA.
21. Specifically, the *Buildable Lands Report 2022 – Whatcom County Review and Evaluation Program* states:

. . . Residential development in the Birch Bay UGA between 2016 and 2021 has occurred at an overall net density less than anticipated in the *Whatcom County Comprehensive Plan*. Additionally, there is not enough capacity in the Birch Bay UGA, with current density assumptions, to accommodate the projected residential growth in the remaining portion of the planning period (between 2021 and 2036). The single family unit capacity in the Birch Bay UGA is insufficient to accommodate the estimated dwelling units needed between 2021 and 2036. Therefore, reasonable measures are appropriate. . . (p. 52).

22. The GMA, at RCW 36.70A.215(1)(b) states:

. . . Reasonable measures are those actions necessary to reduce the differences between growth and development assumptions and targets contained in the countywide planning policies and the county and city comprehensive plans with actual development patterns. . .

23. The *Buildable Lands Report 2022 – Whatcom County Review and Evaluation Program* states that:

. . . potential reasonable measures the County may consider for the Birch Bay UGA include:

- Increasing the minimum net residential density and/or adopting maximum lot size in the UR4 zone (WCC 20.20);
- Adopting minimum net residential density requirements and/or maximum lot size in the URM6 zone (WCC 20.22);
- Adopting minimum net residential density requirements and/or maximum lot size in the GC zone (WCC 20.62); and/or
- Adopting minimum net residential density requirements and/or maximum lot size in the RC zone (WCC 20.64). . . (pp. 53 and 54).

24. The subject amendments constitute “reasonable measures” for the Birch Bay UGA under RCW 36.70A.215.

CONCLUSION

The subject Whatcom County Zoning Code text amendments are consistent with the approval criteria of WCC 22.10.060(2).

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Urban Residential District (WCC 20.20) is hereby amended as shown on Exhibit A.

Section 2. The Urban Residential – Medium Density District (WCC 20.22) is hereby amended as shown on Exhibit B.

Section 3. The Urban Residential Mixed District (WCC 20.24) is hereby amended as shown on Exhibit C.

Section 4. The General Commercial District (WCC 20.62) is hereby amended as shown on Exhibit D.

Section 5. The Resort Commercial District (WCC 20.64) is hereby amended as shown on Exhibit E.

Section 6. The Supplementary Requirements (WCC 20.80) are hereby amended as shown on Exhibit F.

Section 7. The Definitions (WCC 20.97) are hereby amended as shown on Exhibit G.

Section 8. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2023.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

() Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A Whatcom County Zoning Code Amendments

Urban Residential (UR) District

Amend the Urban Residential District text (WCC 20.20) as follows:

20.20.252 ~~Maximum~~ Density requirements, minimum lot size and maximum lot size.

District	Maximum Gross Density Requirements	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR: all densities without public sewer and water	Maximum gross density: 1 dwelling unit/10 acres	N/A*	8,000 sq. ft.	22,000 sq. ft.	80%
UR: in Lake Whatcom Watershed with public sewer and water, and stormwater management facilities	Maximum density: 1 dwelling unit/5 acres	5 acres	N/A	N/A	N/A
UR-3: with public sewer and water, and stormwater management facilities	Maximum gross density: 3 dwelling units/1 acre	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: with public sewer and water, and stormwater management facilities	Maximum gross density: 4 dwelling units/1 acre Minimum net density: 4 dwelling units/1 acre**	5,000 sq. ft.	4,000 sq. ft.	N/A	20%
UR-4: in the Birch Bay Urban Growth Area with public sewer and water, and stormwater management facilities, when density credits	Maximum gross density: 5 dwelling units/1 acre	4,500 sq. ft.	3,500 sq. ft.	N/A	20%

District	Maximum Gross Density Requirements	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
are purchased pursuant to WCC 20.91.020 (2)	Minimum net density: 5 dwelling units/1 acre**				
UR-6: with public sewer and water, and stormwater management facilities	Maximum gross density: 6 dwelling units/1 acre Minimum net density: 6 dwelling units/1 acre**	4,000 sq. ft.	3,000 sq. ft.	N/A	20%

* For the purpose of administering the lot consolidation provisions of WCC [20.83.070](#), the conventional minimum lot size shall be 10 acres.

~~** Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements.~~

(Ord. 2021-059 § 2 (Exh. B); Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2009-024 § 1 (Exh. A), 2009; Ord. 2008-036 Exh. A, 2008; Ord. 2007-050 § 1 Exh. A, 2007; Ord. 2007-048 § 2 Exh. B, 2007).

Rationale: The UR zone applies in the Bellingham, Birch Bay, Blaine, Columbia Valley, Everson, Ferndale, and Lynden UGAs.

- Density Requirements – Changing the terms “maximum density” and “maximum gross density” to “density requirements” in the headings for WCC 20.20.252 recognizes that the table addresses minimum net density in addition to maximum gross density requirements.
- Minimum Net Density – A definition of “minimum net density” is being added to the Definitions section of the Code (WCC 20.97). Therefore, the statement describing how minimum net density is calculated is no longer necessary.

Exhibit B Whatcom County Zoning Code Amendments

Urban Residential - Medium Density (URM) District

Amend the Urban Residential - Medium Density District text (WCC 20.22) as follows:

20.22.251 Minimum lot size.

For the purpose of creating new building lots within the Urban Residential Medium Density District, several land use densities are herein provided. The minimum lot size requirements for new construction vary according to whether or not public sewer and water serve the project site and whether or not transferable development rights are used. The minimum lot size shall be 10 acres or, if public sewer and water are provided, the minimum lot size shall be consistent with WCC 20.22.252 7,200 square feet. (Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2004-021 § 1, 2004; Ord. 87-12, 1987; Ord. 87-11, 1987).

20.22.252 ~~Maximum/minimum-d~~Density requirements and minimum lot size – General.

(1)

District	Gross <u>Density Requirements</u>	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Maximum Lot Size	Minimum Reserve Area (Cluster Divisions)
				Clustered Lots	
URM: all densities without public sewer and water	Maximum density: 1 dwelling unit/10 acres	N/A*	7,200 sq. ft.	22,000 sq. ft.	80%
URM: all densities with public sewer or water	Maximum density: 1 dwelling unit/10 acres	N/A*	7,200 sq. ft.	22,000 sq. ft.	80%
URM-6: with public sewer and water, and stormwater collection and detention facilities	Maximum <u>gross</u> density: 6 dwelling units/acre <u>Minimum net density: 6 dwelling units/acre</u>	3,500 7,200 sq. ft.	<u>2,500 sq. ft.</u> N/A	N/A	<u>20%</u> N/A

District	<u>Gross Density Requirements</u>	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Maximum Lot Size	Minimum Reserve Area (Cluster Divisions)
				Clustered Lots	
URM-12: with public sewer and water, and stormwater collection and detention facilities	Maximum density: 12 dwelling units/acre	7,200 sq. ft.	N/A	N/A	N/A
URM-18: with public sewer and water, and stormwater collection and detention facilities	Maximum density: 18 dwelling units/acre <u>Minimum net density: 8 dwelling units/acre</u>	2,000 7,200 sq. ft.	N/A	N/A	N/A
URM-24: with public sewer and water, stormwater collection and detention facilities and, to obtain a net density greater than 10 dwelling units per acre, transferable development rights pursuant to the provisions of Chapter 20.89 WCC and subsection (4) of this section	Maximum density: 24 dwelling units/gross acre Minimum net density: 10 dwelling units/acre	N/A	N/A	N/A	N/A

* For the purpose of administering the lot consolidation provisions of WCC [20.83.070](#), the conventional minimum lot size shall be 10 acres.

Rationale:

- Density Requirements – Changing the term “gross density” to “density requirements” in the heading for WCC 20.22.252 recognizes that the table addresses minimum net density in addition to maximum gross density requirements.
- URM: all densities with public sewer or water – The density and minimum lot size requirements when either public sewer or water are available are the same as when neither public water nor public sewer are available. Therefore, text relating to “URM: all densities with public sewer or water” can be deleted.
- URM6 Zone – The URM6 zoning only applies in the Birch Bay and Lynden UGAs. The *Buildable Lands Report 2022 Whatcom County Review and Evaluation Program* (pages 46-48 and 50) indicates that “Reasonable Measures” are needed in the Birch Bay UGA to address:
 - ✚ Achieved densities that occurred between 2016 and 2021 that were below the planned densities in Whatcom County Comprehensive Plan Chapter 2 (Goal 2P);
 - ✚ Land capacity to accommodate the population projection adopted in Whatcom County Comprehensive Plan Chapter 1; and
 - ✚ Land capacity to accommodate the single family housing need as set forth in Whatcom County Comprehensive Plan Chapter 3.

The Buildable Lands Report 2022 states that Reasonable Measures may include adopting minimum net residential density requirements and/or maximum lot size (p. 52). *Whatcom County Comprehensive Plan* Goal 2P states:

. . . The County should approve new residential developments at overall average net densities as shown below, while respecting unique characteristics of each community:

- Birch Bay – five to ten units per net acre. . .

The URM 6 zone currently has a maximum density but not a minimum density. Therefore, land in the UGA could be developed at densities lower than specified in Whatcom County Comprehensive Plan Goal 2P. Requiring a minimum net density, when public water and sewer are available, will ensure development in the Birch Bay UGA is consistent with the Comprehensive Plan.

- URM-12 Zone – There is no longer any URM-12 zoning in Whatcom County. Therefore, this category can be deleted from the Zoning Code.
- URM-18 Zone – There is only one URM-18 zone in the County, located in the Bellingham UGA. The URM-18 zone currently has a maximum density but not a minimum density for residential development when public water and sewer is available. Therefore, land could be developed at low densities. Requiring a minimum net density is consistent with the URM zone’s purpose to accommodate medium and higher density residential development (WCC 20.22.010).

(2) Where the lot clustering land division method is used, the minimum lot size is based on consideration of the zoning district’s setback requirements and the Whatcom County health code regulations for sewage systems and drinking water, but shall not be less than that shown above. Where a maximum lot size is imposed, clustered lots shall be as small as allowed by the health department.

~~(3) Where the Whatcom County Comprehensive Plan policies call for restricting densities and allow for the transfer of densities and where the provisions of Chapter 20.89 WCC are met, then the maximum allowable density shall be equal to that established by the Comprehensive Plan; provided, that public sewer and water are available.~~

Rationale: The Zoning Code, rather than the Comp Plan, establishes maximum allowable density when transfer of development rights (TDRs) are used. The Comprehensive Plan does not establish these densities.

~~(4) In the URM-24 Zones, minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements.~~

Rationale: A definition of “minimum net density” is being added to the Definitions section of the Code (WCC 20.97). Therefore, the statement describing how minimum net density is calculated is no longer necessary.

~~(35)~~ In the URM-24 Zones, transferable development rights (TDRs) must be used to achieve net densities higher than 10 dwelling units/acre, pursuant to the provisions of Chapter [20.89](#) WCC, Density Transfer Procedure. Each development right transferred may be used to develop three dwelling units in the URM-24 zone. (Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2009-024 § 1 (Exh. A), 2009; Ord. 2008-036 Exh. A, 2008; Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 2004-021 § 1, 2004; Ord. 98-083 Exh. A § 20, 1998; Ord. 89-92, 1989; Ord. 84-38, 1984).

20.22.253 Maximum density and minimum lot size – Specific uses.

(1) Multifamily ~~development residential uses~~ as provided in WCC [20.22.050](#) shall have a minimum parcel size equal to the gross density of the zone; provided, that under no circumstance shall the minimum parcel size be less than ~~7,0008,000~~ square feet.

Rationale: The Zoning Code defines “Multifamily development” as two or more dwelling units on one lot (WCC 20.97.263). The Zoning Code does not define “Multifamily residential uses.” Allowing smaller lot sizes can provide for more efficient higher density development and more affordable housing.

(2) Mobile home parks shall have a density consistent with WCC 20.22.252(1)~~equal to that established by the zone district with a maximum density of seven units per acre~~ and a minimum net parcel size of two acres. (Ord. 2004-021 § 1, 2004; Ord. 88-29, 1988).

Rationale: The Whatcom County Zoning Ordinance defines “mobile home park” as “. . . any parcel or adjacent parcels of land in the same ownership that is used for occupancy by more than two mobile homes. . .” The existing Code language is confusing because none of the URM zones have a density of 7 units per acre (and some allow densities higher than this). Mobile homes can provide affordable housing and should be allowed at the same density as site-built homes.

Exhibit C Whatcom County Zoning Code Amendments

Urban Residential Mixed (UR-MX) District

Amend the Urban Residential Mixed District text (WCC 20.24) as follows:

20.24.252 Density requirements and minimum lot size.

District	Gross-Density Requirements	Minimum Lot Size (sq. ft.)		Maximum Lot Size (sq. ft.)	Minimum Reserve Area (Cluster Divisions)
		Conventional	Cluster	Clustered Lots	
URMX: all densities without public sewer and water	Maximum density: 1 dwelling unit/10 acres	N/A*	4,000	22,000	80%
URMX: all densities with public sewer or water	Maximum density: 1 dwelling unit/10 acres	N/A*	4,000	22,000	80%
URMX: with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 10 dwelling units/1 acre Minimum net density: 6 dwelling units/1 acre	4,000	N/A	N/A	N/A
URMX (6 – 10): with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 10 dwelling units/1 acre Minimum net density: 6 units/1 acre	4,000	N/A	N/A	N/A
URMX (6 – 12): with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 12 dwelling units/1 acre	N/A	N/A	N/A	N/A

District	Gross-Density Requirements	Minimum Lot Size (sq. ft.)		Maximum Lot Size (sq. ft.)	Minimum Reserve Area (Cluster Divisions)
		Conventional	Cluster	Clustered Lots	
	Minimum net density: 6 units/1 acre				
URMX (10 – 24): with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 24 dwelling units/1 acre Minimum net density: 10 units/1 acre	N/A	N/A	N/A	N/A

* For the purpose of administering the lot consolidation provisions of WCC [20.83.070](#), the conventional minimum lot size shall be 10 acres.

~~(1) Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical areas regulations and infrastructure requirements.~~

~~(12)~~ For development with densities over a zone’s minimum net density, transferable development rights (TDRs) from the Lake Whatcom watershed sending area must be used, pursuant to the provisions of Chapter [20.89](#) WCC, Density Transfer Procedure. Each development right transferred from the Lake Whatcom watershed may be used to develop three dwelling units in the UGA. TDRs must be used to attain any density greater than the minimum net density of a zone. (Ord. 2020-045 § 1 Exh. A, 2020; Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2009-024 § 1 (Exh. A), 2009; Ord. 2004-021 § 1, 2004; Ord. 2001-023 § 1, 2001; Ord. 99-087 § 1, 1999; Ord. 97-046 § 2, 1997).

Rationale: The UR-MX zoning only applies in the Bellingham UGA.

- Density Requirements – Changing the term “gross density” to “density requirements” in the heading for WCC 20.24.252 recognizes that the table addresses minimum net density in addition to maximum gross density requirements.
- Minimum Net Density – A definition of “minimum net density” is being added to the Definitions section of the Code (WCC 20.97). Therefore, the statement describing how minimum net density is calculated is no longer necessary.

Exhibit D Whatcom County Zoning Code Amendments

General Commercial (GC) District

Amend the General Commercial District text (WCC 20.62) as follows:

.065 One single-family dwelling per lot of record subject to:

- (1) Health department requirements regarding sewage disposal~~soil type~~ and water supply.
- (2) Height regulations, lot coverage, open space, development standards and performance standards shall be in accordance with the provisions of Chapter 20.20 WCC; except that side and rear yard setbacks shall be 10 feet from vacant, adjacent, commercially zoned properties.
- (3) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a General Commercial Zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.
- (4) Such use requires a conditional use permit if located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.
- (5) Within the Columbia Valley Urban Growth Area, single-family dwellings are not permitted in the General Commercial Zone.

(6) For the purpose of creating new building lots in the Birch Bay UGA, single family dwellings shall have a minimum net density of seven units per acre and be served by public water and sewer.

.066 Duplexes and multifamily dwellings not to exceed 18 units per gross acre subject to all of the following requirements:

(1) Availability of adequate public sewer, ~~or public~~ water, and appropriate storm water management facilities~~drainage~~;

~~(2) The maximum number of units shall be determined by the health department based on soil type and water supply;~~

(2) In the Birch Bay UGA, the minimum net density on the portion of the parcel being developed with residential uses shall be eight dwelling units per acre.

(3) Provision of adequate right-of-way and street improvements to bring adjacent roadways up to necessary standards.;

(4) Height regulations, lot coverage, open space, development standards and performance standards shall be in accordance with the provisions of Chapter [20.22 WCC](#).

(5) Site plan review shall be done by the technical review committee to ensure compliance with the intent of the general development standards in WCC [20.62.650](#). Four or less units per acre are exempt from this requirement.

(6) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a General Commercial Zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.

(7) Duplexes and multifamily dwellings shall not be located within airport overlay zone 2 or 3 as shown in Whatcom County Comprehensive Plan Appendix H.

(8) Within the Columbia Valley Urban Growth Area, duplex and multifamily development shall not occupy more than 25 percent of the total land area in the General Commercial Zone. This restriction does not apply to dwellings located above ground-floor commercial development.

Rationale: The GC zoning only applies in the Birch Bay, Bellingham, and Columbia Valley UGAs. *Whatcom County Comprehensive Plan* Goal 2P states:

. . . The County should approve new residential developments at overall average net densities as shown below, while respecting unique characteristics of each community:

- Birch Bay – five to ten units per net acre. . .

The *Buildable Lands Report 2022 Whatcom County Review and Evaluation Program* indicates that “Reasonable Measures” are needed in the Birch Bay UGA to address:

- ✚ Achieved densities that occurred between 2016 and 2021 that were below the planned densities in Whatcom County Comprehensive Plan Chapter 2 (Goal 2P);
- ✚ Land capacity to accommodate the population projection adopted in Whatcom County Comprehensive Plan Chapter 1; and
- ✚ Land capacity to accommodate the single family housing need as set forth in Whatcom County Comprehensive Plan Chapter 3.

The *Buildable Lands Report 2022* states that Reasonable Measures may include adopting minimum net residential density requirements and/or maximum lot size (p. 52). Requiring a minimum net density for residential development in the Birch Bay General Commercial zone will ensure development is consistent with the Comprehensive Plan.

All General Commercial zones in the County are in UGAs. Medium to high density residential development should be served by public water and sewer.

Exhibit E Whatcom County Zoning Code Amendments

Resort Commercial (RC) District

Amend the Resort Commercial District text (WCC 20.64) as follows:

20.64.050 Permitted uses.

...

.054 Residential type uses.

- (1) One single-family dwelling per lot of record.
- (2) One duplex per lot of record.
- (3) Rooming houses accommodating eight or less nonfamily members.
- (4) Multifamily dwellings containing eight or less sleeping units. In the Birch Bay UGA, public water and sewer must serve the dwellings.

Rationale: Resort Commercial zoning exists in the Birch Bay UGA, Point Roberts LAMIRD, and the Glacier LAMIRD. The Birch Bay UGA is served by public water and sewer, which is appropriate for medium to high density development in an urban growth area.

(5) One private, noncommercial, recreational vehicle and one accessory guest RV per lot; provided, that the following minimum requirements and standards are met and/or followed:

- (a) All recreational vehicles that remain on the site for more than 14 consecutive days shall be connected to a permitted on-site sewage system or public sewer.
- (b) Maximum length of stay of a recreational vehicle on a lot located outside of a recreational vehicle park shall not exceed 120 days per calendar year; provided, that no accessory guest recreational vehicle shall stay on the lot for more than 14 consecutive days nor more than 30 days total per calendar year.
- (c) All recreational vehicles shall be screened from neighboring properties not using RVs and from public roads. Such screening may consist of landscaped buffer areas, suitable native vegetation or a fence.

(d) Outside of an approved recreational vehicle park, lots shall not be leased or rented out on a daily or overnight basis for recreational use.

(e) The locations of parked RVs on vacant lots shall observe normal building setback standards for a single-family residence.

(f) All recreational vehicles shall be supported by their own wheels or camper jacks, and not be fastened to accessory structures. Placement of a recreational vehicle on a foundation or removal of the wheels of a recreational vehicle, except for temporary purposes for repair, is prohibited.

(6) Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

20.64.150 Conditional uses.

...

.153 Residential type uses.

(1) Multifamily dwellings including residential condominiums totalling more than eight sleeping units. [In the Birch Bay UGA, public water and sewer must serve the dwellings.](#)

Rationale: Resort Commercial zoning exists in the Birch Bay UGA, Point Roberts LAMIRD, and the Glacier LAMIRD. The Birch Bay UGA is served by public water and sewer, which is appropriate for medium to high density development in an urban growth area.

(2) Mobile home parks. See WCC [20.80.950](#) for mobile home and recreational vehicle park standards.

(3) Rooming and boarding houses totalling more than eight sleeping units.

20.64.250 Minimum lot size.

Minimum lot size varies according to the availability of public water and/or public sewer. Where public water service is not provided, the minimum parcel size shall be five acres. Where public water service is provided but public sewer is not provided, the minimum parcel size shall be 18,000 square feet when the conventional method is utilized and 15,000 square feet when the cluster method is utilized but may be greater if the Whatcom County health department finds that conditions require the larger size. The following lot sizes apply only where both public sewer and public water serve the project:

.251 Single-family dwellings shall have a minimum lot size of 3,000 square feet and duplexes shall have a minimum ~~lot size~~~~net parcel size~~ of 6,000 square feet ~~per dwelling~~.

.252 Multifamily dwellings including all condominiums except time share condominiums shall have a minimum ~~lot~~~~net parcel~~ size of 8,000 square feet and shall have a site of at least 2,000 square feet for each dwelling unit.

.253 Mobile home and recreational vehicle parks shall have a minimum ~~net parcel~~ size of at least 3,000~~8,000~~ square feet for each space.

.254 Hotels and motels and time share condominiums shall have a minimum ~~lot~~~~net parcel~~ size of 8,000 square feet and shall have a site of at least 1,600 square feet for each sleeping unit.

.255 Nonhabitation commercial uses shall have a minimum lot size consistent with the area required to meet the building setback, lot coverage and development standards of this district. (Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2005-037 § 1 Exh. A, 2005; Ord. 2001-024 § 1, 2001; Ord. 88-93, 1988).

Rationale:

Allowing smaller lot sizes for single family dwellings, duplexes, and mobile homes can provide for more efficient higher density development and more affordable housing. “Minimum net parcel size” is not defined by the County Zoning Code, but “minimum lot size” is defined in WCC 20.97.240. Therefore, “minimum lot size” is being substituted for “minimum net parcel size” above.

20.64.260 ~~Maximum gross d~~Density requirements.

Maximum gross density varies according to the availability of public water and/or public sewer. Where public water service is not provided, the maximum density for dwelling units, or dwelling unit equivalent as determined by the Whatcom County health department, shall be one dwelling/five acres. Where public water service is provided but public sewer is not provided, the maximum density for dwelling units, or dwelling unit equivalent as determined by the Whatcom County health department, shall be two per acre unless the health department finds that conditions require a lower density. The following densities apply only where both public sewer and public water serve the project:

.261 Single-family dwellings and duplexes shall not exceed a maximum gross density of seven units per acre. Single-family dwellings and duplexes shall have a minimum net density of seven units per acre in the Birch Bay UGA.

.262 Multifamily dwellings including all condominiums except time share condominiums shall not exceed a maximum gross density of 22 units per acre. Multifamily dwellings including all condominiums (except time share condominiums) that are not in a mixed-use development shall have a minimum net density of 10 dwellings per acre in the Birch Bay UGA.

.263 Mobile home parks shall not exceed a maximum gross density of seven units per acre. Mobile home parks shall have a minimum net density of seven units per acre the Birch Bay UGA.

.264 Recreational vehicle parks shall not exceed a density of 15 units per acre.

.265 Nonresort-oriented hotels and motels shall not exceed a floor area ratio (FAR) of .60.

.266 Resort-oriented hotels and motels including time share condominiums shall not exceed a floor area ratio (FAR) of .56.

.267 Nonhabitation commercial uses shall not exceed a floor area ratio (FAR) of .70. (Ord. 2017-062 § 1 Exh. A; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2005-037 § 1 Exh. A, 2005; Ord. 2001-024 § 1, 2001; Ord. 88-93, 1988).

The *Buildable Lands Report 2022 Whatcom County Review and Evaluation Program* indicates that “Reasonable Measures” are needed in the Birch Bay UGA to address:

- ✦ Achieved densities that occurred between 2016 and 2021 that were below the planned densities in Whatcom County Comprehensive Plan Chapter 2 (Goal 2P);
- ✦ Land capacity to accommodate the population projection adopted in Whatcom County Comprehensive Plan Chapter 1; and
- ✦ Land capacity to accommodate the single family housing need as set forth in Whatcom County Comprehensive Plan Chapter 3.

The *Buildable Lands Report 2022* states that Reasonable Measures may include adopting minimum net residential density requirements and/or maximum lot size (p. 52).

Whatcom County Comprehensive Plan Goal 2P states:

. . . The County should approve new residential developments at overall average net densities as shown below, while respecting unique characteristics of each community:

- Birch Bay – five to ten units per net acre. . .

The Resort Commercial zone currently has maximum densities but not minimum densities. Therefore, land in the Birch Bay UGA could be developed at densities lower than specified in *Whatcom County Comprehensive Plan* Goal 2P. Requiring a minimum net density will ensure development is consistent with Comprehensive Plan Goal 2P.

20.64.270 Density, lot size and lot configuration by method of subdivision.

(Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2005-037 § 1 Exh. A, 2005).

20.64.271 ~~Maximum-d~~Density requirements and minimum lot size.

District	Gross Maximum Density Requirements	Minimum Lot Size		Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	
RC: without public water	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	5 acres	Not applicable	Not applicable
RC: with public water but without public sewer	<u>Maximum gross density: 2 dwelling units/1 acre</u>	18,000 sq. ft.	15,000 sq. ft.	10%
RC: with both public sewer and water and stormwater management collection and detention facilities	<u>Maximum gross density: 7 to 22 dwelling units/acre</u> <u>Minimum net density: 7 to 10 dwelling units/acre</u> <u>(WCC 20.64.260)</u> <u>as given</u>	6,000-3,000 to <u>8,000</u> sq. ft. <u>(WCC 20.64.250)</u>	Not applicable	Not applicable

(Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2005-037 § 1 Exh. A, 2005; Ord. 98-083 Exh. A § 53, 1998; Ord. 88-93, 1988).

Rationale:

- Density Requirements – Minimum net density is added to the chart. Changing the term “gross maximum density” to “density requirements” in the heading for WCC 20.64.271 recognizes that the table addresses minimum net density in addition to maximum gross density requirements.
- Minimum Lot Size - Minimum lot sizes in the Resort Commercial zone would range from 3,000 to 8,000 square feet under the proposal (WCC 20.64.250).

Exhibit F Whatcom County Zoning Code Amendments

Supplementary Requirements

Amend the Supplementary Requirements text (WCC 20.80) as follows:

20.80.253 Commercial districts.

- (1) Neighborhood Commercial District. Setbacks for those parcels situated adjacent to Urban Residential, Residential Rural and Rural Zone Districts shall be administered pursuant to WCC 20.60.550 (Buffer area).
- (2) General Commercial District. Setbacks for those parcels situated adjacent to Urban Residential, Rural Cluster Development and Rural Zone Districts shall be administered pursuant to WCC 20.62.550 (Buffer area).
- (3) Tourist Commercial District.
 - (a) Setbacks for those parcels situated adjacent to Urban Residential, Urban Residential Medium Density, Residential Rural and Rural Zone Districts shall be administered pursuant to WCC 20.63.550 (Buffer area).
 - (b) Setback requirements for recreational vehicle parks shall be 30 feet for side and rear yards.
 - (c) Front yard setback requirements for service islands of service stations shall be 25 feet to the center line of the driveway of the closest service island.
- (4) Resort Commercial District.
 - (a) Except for single-family residences, when a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Residential Rural, or Rural district, the project shall also meet the requirements of WCC 20.64.550 (Buffer area).

~~(b) Side and rear yard setbacks for multifamily housing, recreational vehicle parks, and mobile home parks shall be 20 feet.~~

Rationale: There are a variety of uses allowed in the Resort Commercial District that are not subject to the 20' side yard setback including but not limited to: Retail and office uses, restaurants, hotels, motels, single family homes, fire stations, community centers, schools, and retirement homes. It's unclear why multifamily housing, RV parks, and mobile home parks were singled out for a larger setback. Given that other uses that could have greater height are not included, it does not appear that this provision was intended to address view protection. It should be noted that WCC 20.80.950 (Mobile home park standards) and WCC 20.80.955 (RV Park Standards) also require a 20' setback for these uses. Therefore, the effect of would be to eliminate the 20' setback for multifamily housing.

(~~b~~e) For recreational vehicle parks and resort-oriented hotels and motels, front yard setbacks shall be 45 feet.

(~~c~~e) For non-resort oriented hotels and motels and nonhabitation commercial development, side yard setbacks shall be zero feet and rear yard setbacks shall be 10 feet.

(~~d~~e) Commercial uses shall be allowed to reduce the front yard setback to 15 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.

(~~e~~f) For internal lots in a single-family development, the side yard setback may be reduced to zero feet when the lot line setback on the opposite side yard is 10 feet; however, side yard setbacks adjacent to parcels not being developed under this exception shall be those provided in WCC 20.80.200 (Setback requirements).

(~~f~~g) An additional five feet shall be added to each side and rear yard for each 10 feet of building height, or fraction thereof, in excess of 15 feet. (Ord. 2020-045 § 1 Exh. A, 2020; Ord. 99-080, 1999).

Exhibit G Whatcom County Zoning Code Amendments

Definitions

Amend the Definitions text (WCC 20.97) as follows:

20.97.240.1 Minimum net density.

“Minimum net density” means the fewest number of residential units per acre that must be constructed or lots per acre that must be created in a short plat, subdivision or phased subdivision on the buildable area of a parent parcel within a land division. Minimum net density is calculated as the number of dwelling units per net acre after deducting land within the 100-year floodplain, land restricted from development by critical area regulations (including buffers) and shoreline regulations (including setbacks), land used for common facilities in the land division such as road rights of way or easements, utility easements, stormwater tracts, parks, open space tracts, and land devoted to non-residential land uses in a mixed use development (e.g. commercial uses).

Rationale:

The Zoning Code establishes “minimum net densities” for land divisions in some zoning districts. While there are currently statements in the Code about how minimum net density is calculated, there is no definition.

In Urban Growth Areas, the Zoning Code would typically have a minimum net density and maximum gross density. An example follows for a single family residential subdivision a 10 acre parcel in the URM-6 zone (that would require a minimum net density of 6 dwellings/acre and impose a maximum gross density of 6 dwelling units/acre).

Minimum Net Density: Minimum density is based upon the buildable portion of the parcel after deductions (critical areas, road right of ways, stormwater tracts, etc.). On a 10 acre parcel in the URM6 zone with 6 acres of deductions and 4 acres of buildable land, the developer would be required to develop a minimum of 24 lots (4 net buildable acres x 6 lots/net acre = 24 lots).

Maximum Gross Density: The existing code imposes maximum gross density limits. Gross density is based on the entire area of the parcel, regardless of critical areas and other site constraints. On this same 10 acre parcel, the developer could develop as many as 60 lots, if feasible given the various critical areas and other constraints (10 gross acres x 6 lots/gross acre = 60 lots).

Therefore, in the example above, the developer would be required to plat at least 24 lots but no more than 60 lots on the 10 acre parcel.